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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of:

Reply comments regarding procedures for

Reviewing Requests for Relief from certain

State and Local Regulations;

WT Docket No. 97-192

Comments on Preemption of State and Local

Zoning and Land Use Restrictions on the Siting,

Placement and Construction of Broadcast

Station Transmission Facilities;

MM Docket No 97-182

ET Docket No. 93-62

RM-8577

COMMENTS FROM THE HARDWICK ACTION COMMITTEE

1. Introduction

We, the members of the Hardwick Action Committee come from a small town in Vermont. We are housewives, teachers, farmers, mechanics, artists, hunters, business people and professionals. We are rural Vermonters, which is to say we are a stubborn lot, a people who choose to live apart from the rest of the world. We are people who want to live in a backward, rural place, disconnected from the rat race, from trends, perhaps even from the wonders of personal wireless services and digital television technology. We are people who live with the old ways and like it. We often use outdated technologies, like typewriters,

wood stoves and two-way radios. Yes, our way of life is anachronistic. It is also how we choose to live, literally away from it all.

Most Vermonters have a reverence for the Green Mountains and hills that is almost inexplicable until you realize that for us, the natural world is more than an escape - a view or a vacation - it is the world we live and work in.

So imagine the dismay of Hardwick residents when a telecommunication company, called RSA Limited Partnership, dba Bell Atlantic Mobile proposed a 163 foot tower practically on the summit of Buffalo Mountain. Maybe BAM didn't do a terrific amount of research, or maybe their classic disregard for the public interest blinded them, but they happened to choose Buffalo Mountain, a mountain that has always, since the town was founded in 1797, served as the scenic backdrop for the village of Hardwick. The mountain is visible from every road that leads into town.

Buffalo Mountain is so symbolic to the people of Hardwick that it was incorporated into the town's logo some years ago. This logo features prominently on the town's welcome signs, the signs for the Hardwick Town House, the Jeudevine Library, the Hardwick Depot, the Hardwick Police Department cruisers and the Hardwick Road Crew's trucks. The coop and a music shop are both named after Buffalo Mountain.

Naturally, many Hardwick area residents are agitated by this tower proposal. Over 380 area residents have signed a petition stating that the proposed tower would have a negative visual and environmental impact on the town and the mountain. Over 25 residents have written letters to the editor of *The Hardwick Gazette* opposing the tower. Close to a hundred people have attended the Hardwick Zoning Board's public hearings for BAM's application for a conditional use permit. The tower is being proposed in all our backyards, on Buffalo Mountain, the most prominent feature of the Hardwick's landscape.

We, the Hardwick Action Committee, have grave concerns about the economic, environmental and aesthetic impact of this tower on our community. We certainly wish Bell Atlantic had been more sensitive about the siting of its proposed tower.

You need to know that BAM's proposed site in Hardwick is not in an area described by the FCC in Fact Sheet #2 as "compatible with the proposed use". This includes "such as industrial zones, utility rights of way, and pre-existing structures." This proposed site is in an R-1 zone, defined by the Hardwick Zoning Regulations as "an area that should have the lowest intensity of use, having primarily such uses as agriculture and forestry." The regulations also note that the "criteria used in selecting the land areas to be devoted to this use are the lack of roads or road network within the area, the topography of the land, whether steep or swampy area".

A tower on the mountain could lower property tax values, since the tower will be highly visible from just about every vantage in town. In many Vermont towns, like Hardwick, landowners with beautiful views of the mountains are assessed a higher property tax value. Three landowners in town testified to the Hardwick Zoning Board that a view of the tower would lower the appraised value of their land. These residents also believe a blight on the landscape, i.e. a tower, could impact resale of their homes. People move to Vermont to get away from cluttered landscapes. They visit Vermont to enjoy its natural beauty. Without its pristine mountains and agricultural landscape, the state would be just like any other overdeveloped part of the country. Tourism is the driving force behind the state of Vermont's economy.

From an environmental standpoint, legitimate questions about long-term, low-level exposure to radio frequency radiation emissions from personal wireless services facilities and from broadcasting facilities remain unaddressed. The fact that the public's concerns raised about potential radio frequency radiation emissions from a proposed tower at a local zoning hearing is considered inadmissible evidence by this

agency, the FCC, is repugnant. It is essentially a gag order on citizens' right to free speech. Your government agency represents the public's interest, yet it is unwilling to allow state and local authorities to accept evidence of the public's concern about radio frequency radiation. It's no wonder citizens are concerned about these emissions - with the new rules the agency is proposing the industry will become completely self-certified and self-regulated.

Aside from the unknown environmental impacts of radio frequency radiation on the residents of Hardwick, there would be a significant environmental impact on the mountain itself and its wildlife. The road BAM proposes to use to reach the site flooded so badly two years ago that the Federal Emergency Management Agency paid to repair the 12 foot deep ruts in it. A home near the base of the mountain was severely damaged.

The proposed site for BAM's cellular phone tower is a wilderness area. A myriad of wild creatures live here: black bears, grouse, deer, flying squirrels, wild turkeys, moose, porcupines, etc. A cellular phone tower and its accompanying parking lot, trailer and half mile long road would destroy wildlife habitat.

We, as members of the Hardwick Action Committee, believe that the telecommunications industries already have a high success rate when it comes to siting towers. According to the Environmental Board's comments on this proposed docket, from January 1990 to December 1995, before the Telecommunications Act of 1996 was passed, personal wireless service deployment didn't seem too difficult for the industry - "of the 66 applications, 58 received permits and only 2 were denied."

The Telecommunications Act of 1996 pre-empts state and local laws too much as it is. Under the current agency rules, if a zoning board does not provide "substantial evidence", the telecommunications industry can appeal the decision to the state Environmental Court. First of all, towns do not have the financial resources to provide the substantial evidence necessary, they do not have the money to hire experts. In the

event of an appeal they can not afford to raise local property taxes in order to employ the necessary lawyers.

Contrary to how the FCC describes information exchange and initial site inquiries made by a prospective facilities owner described in FCC Fact Sheet #2, 9/17/96, BAM has used a strategy of smoke and mirrors to confuse, manipulate and intimidate the Town of Hardwick. At the first public hearing in Hardwick, BAM threatened to appeal a denial. At the second hearing, they refused to supply an environmental study to the zoning board. BAM was represented by a lawyer from Washington D.C., a lawyer from Burlington, Vermont, a real estate developer, an engineer. They also brought along a stenographer. This team of telecommunications experts proceeded to eat up the public hearing session with an extremely lengthy presentation that lasted two hours. When the public was finally allowed to speak, BAM officials interrupted citizens with long explanations, rebuttals and sheer rhetoric. At the third public hearing, BAM admitted that it had neglected to shade in a significant portion of the town in its viewshed analysis. BAM revised its viewshed analysis after members of the Hardwick Action Committee did its own balloon test.

2. Comment on the Proposed Rules

The Hardwick Action Committee opposes any further preemption of state and local land use laws relative to personal wireless service facilities. Instead of further preemption, the FCC should allocate from the billions of dollars it has received from license fees and auctions additional resources to education and training at the state and local level with regard to personal wireless service facilities.

Vermont's Act 250 has historically proven through the last 25 years that the path to economic prosperity is through balanced environmental protection, not the preemption of such protection. Any further preemption will undermine Act 250 and local environmental protection.

We believe the industry's petition for relief from state or local regulations on the placement, construction or modification of personal wireless service facilities based either directly or indirectly on the environmental effects of RF emissions is a gag order. It violates the rights of citizens to use free speech in a public hearing about proposed personal wireless services and broadcasting facilities. The mere mention of RFR emissions at a public hearing should not disqualify a state or local authority's decision.

Any rule which is adopted by the FCC must not hinder any citizen participation. The FCC should not create barriers to citizen participation, or the participation of the authority whose ruling is being challenged.

The docket states that the agency "would presume that personal wireless facilities will comply with our RF emissions guidelines. The state or local government would have the burden of overcoming this presumption by demonstrating that the facility in question does not or will not, in fact, comply with our RF guidelines". If a personal wireless service facility is sited in Hardwick, the Town lacks the financial and technical resources to determine whether or not the radiofrequency emissions from a facility would exceed the FCC guidelines.

The agency should not anticipate that state and local land use authorities will fail to reasonably and faithfully carry out their obligations under federal law.

The Hardwick Zoning Board has 60 days after the public hearing process has been completed to submit a written decision on whether or not to grant an applicant a conditional use permit. This is a reasonable length of time.

We oppose the FCC's proposal to extend authority over private entities, like home owner associations and private land covenants, which could impact the Vermont Land Trust and the Nature Conservancy's landholdings.

The telecommunications industry should be required to perform emissions evaluation as a condition of license. Ideally, the FCC would actually regulate the industry. As a government agency, the FCC should not be concerned about minimizing the profits of the telecommunications industry by requiring that the industry prove that it will meet the FCC's emissions guidelines. The industry should pay for the preparation of the demonstration of compliance, after all it is making a profit.

A tower on the horizon is clearly not in harmony with the rural nature of Vermont, and is, therefore, by definition, "an adverse impact." But is its adverse impact so detrimental to the aesthetics of the area as to be judged an "undue adverse impact"? This answer can only be found at the local and state level. Washington cannot presume to make this kind of judgment.

Submitted by,

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